

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 12/19/2003	NUMBER 04.02.107
SUBJECT COLLECTION OF COURT-ORDERED VICTIM RESTITUTION/FILING FEES AND COSTS		SUPERSEDES 04.02.107 (01/01/02)	
		AUTHORITY MCL 600.2963; 600.5511; 780.766; 791.203; 791.220h; 791.236; 791.268; Administrative Rule 791.4425	
		ACA STANDARDS NONE	
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POLICY STATEMENT:

The Department shall collect victim restitution and court-ordered filing fees and costs from prisoners and parolees as set forth in this policy.

RELATED POLICY:

04.02.105 Prisoner Funds

POLICY:

GENERAL INFORMATION

- A. MCL 791.220h requires the Department to remove funds from prisoners' institutional accounts to pay victim restitution upon receipt of a court order requiring payment of victim restitution. In addition, federal and state courts are authorized by law to require the Department to remove funds from prisoners' institutional accounts to pay filing fees and costs. The Department also may remove funds from a prisoner's account to pay costs ordered by a federal court. Except when otherwise specifically ordered by the court, this policy and PD 04.02.105 "Prisoner Funds" shall apply when removing funds from a prisoner's account for any of these purposes.
- B. Requirements set forth in this policy for the collection of funds to pay victim restitution apply only to the following orders:
 1. Orders received by the Department which were issued on or after June 1, 1997. These orders remain effective until satisfied in full.
 2. Orders received by the Department which were issued between July 10, 1985 and May 31, 1997. These orders remain effective for two years after the prisoner's discharge on the maximum sentence for the offense for which restitution was ordered or discharge from parole, unless a shorter period of time is provided for in the order.
- C. Any court orders received requiring a prisoner in a Correctional Facilities Administration (CFA) institution to pay court-ordered victim restitution, requiring the Department to remove funds from a prisoner's account to pay filing fees and costs, or, if a federal court order, requiring the prisoner to pay costs shall be referred to the local litigation coordinator of the institution at which the prisoner is housed for forwarding to the Administrative Officer or, if regarding restitution, to the Record Office Supervisor. However, if the court order is the judgment of sentence remanding the prisoner to the Department's custody, it shall instead be referred directly to the Record Office Supervisor. In addition, the Administrative Officer need not forward to the local litigation coordinator a court order regarding the payment of filing fees/costs if the Administrative Officer received the order directly from the court.
- D. Any court orders received requiring a prisoner in Community Residential Program (CRP) or the Special Alternative Incarceration Program facility (SAI) or on parole to pay victim restitution, except for the judgment of sentence remanding the prisoner to the Department's custody, or to pay filings fees/costs

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shall be forwarded to the CRP Record Office, SAI Administrator or designee, FOA field agent or, if on parole to another state, Interstate Compact Manager, as appropriate. When a prisoner in CRP or SAI paroles, the orders shall be forwarded to the supervising FOA field agent or, if paroled to another State, the Interstate Compact Manager.

CFA

- E. The CFA Deputy Director, in conjunction with the Department of Information Technology, shall ensure that a computerized record-keeping system is maintained for the collection of funds from CFA prisoners pursuant to this policy.
- F. The CFA Deputy Director shall ensure that a manual record-keeping system also is maintained. This shall include maintaining in each institutional Business Office the Court Order Collection Record (CRX-173) for each prisoner at that institution from whom funds are being collected pursuant to this policy. The form shall be completed in accordance with procedures issued by the CFA Deputy Director. The institutional Business Office shall retain the Record and the applicable orders when they have been satisfied in full. Whenever there is an outstanding balance to be collected, the Court Order Collection Record and the applicable orders shall transfer/be retained as follows:
 - 1. The Record and court orders shall transfer with the prisoner when the prisoner transfers between CFA institutions or to/from the Michigan Youth Correctional Facility.
 - 2. If filing fees/costs remain to be collected for a prisoner who transfers to CRP or SAI, copies of the Record and court orders shall be forwarded within ten business days to the CRP Record Office or SAI Administrator, or designee, as appropriate. The original Record and a copy of the court orders shall be retained in the prisoner's Record Office file.
 - 3. If filing fees/costs remain to be collected for a prisoner who paroles, copies of the Record and court orders shall be forwarded within ten business days to the appropriate Field Operations Administration (FOA) field agent or, if paroled to another State, the FOA Interstate Compact Manager. The original Record and a copy of the court orders shall be retained in the prisoner's Record Office file.
 - 4. If victim restitution remains to be collected for a prisoner who transfers to CRP or SAI or paroles, copies of the Record and court orders shall be forwarded within ten business days to the CRP Record Office, SAI Administrator or designee, FOA field agent or, if paroled to another State, the FOA Interstate Compact Manager, as appropriate, only if the order requiring payment of restitution is not the judgment of sentence remanding the prisoner to the Department's custody. The original Record and a copy of the court orders shall be retained in the prisoner's Record Office file.
 - 5. The Record and court orders shall be retained in the prisoner's Record Office file if the prisoner discharges from the Department's jurisdiction or dies.

Victim Restitution

- G. Upon receipt of an order requiring a prisoner to pay victim restitution, the Record Office Supervisor shall ensure the information is entered on the Department's computerized database (i.e., CMIS, OMNI), that the order is placed in the prisoner's Record Office file and that a copy of the order is forwarded to the Administrative Officer.
- H. Upon receipt of the copy of the order, the Administrative Officer shall ensure that a debt is created for the amount of victim restitution ordered to be paid and that 50% of funds received by the prisoner in excess of \$50 per month is collected to satisfy the debt in the manner set forth in PD 04.02.105. If there is more than one victim to whom restitution is owed, payments shall be divided equally between or among the victims. If written verification is received directly from the court that payments have been

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received from other than the Department, the debt shall be reduced accordingly. If an order is received prohibiting the Department from removing funds from the account, the debt shall be removed only after notifying the court of the statute requiring the Department to remove funds from the account and confirming that it is the court's intent to order the Department not to comply with that statute. Whenever a debt is removed, it shall be noted on the Court Order Collection Record.

- I. Funds collected pursuant to Paragraph H shall be sent to the victim in care of the appropriate court whenever the amount collected exceeds \$100. Funds of \$100 or less shall be sent only when the full amount owed has been collected or the prisoner paroled, transfers to CRP or SAI, discharges or dies. An explanation of the circumstances under which the funds are being sent to the court shall be included with the funds. If the prisoner transfers to another CFA institution and the total amount ordered to be paid has not been collected, the institution to which the prisoner transfers shall continue collection in accordance with the policy.

Filing Fees and Costs

- J. A CFA prisoner filing a civil action who claims s/he is indigent and therefore cannot pay the required filing fee is required by federal and state law to provide the court with a certified copy of the prisoner's account history. The history must identify the prisoner's current balance in the account and deposits to and withdrawals from the account for either 12-months if in state court or six months if in federal court. Whenever a prisoner requests a history of his/her account for litigation, the prisoner also shall be provided a Certificate of Prisoner Account Activity (CSJ-277), unless another form is required by the court. The account history and the Certificate shall be sent to the prisoner within five business days after receipt by the business office of a request, provided it contains the information required to prepare the history and certificate. The prisoner shall not be charged for providing this documentation. The prisoner must identify the court and name of the case, before the account history and Certificate are provided.
- K. The court will determine the amount of filing fees that the prisoner will be required to pay at the time of filing based on information contained in the Certificate of Prisoner Account Activity and the account history. In state court, the prisoner must pay the filing fee in the amount determined by the court within 21 calendar days or the civil action will not be accepted for filing. In federal court, the Department may be required to remove funds from the prisoner's account to pay the fee. If a state or federal court determines that less than the entire filing fee must be paid at the time of filing, the court may order the Department to remove funds from the prisoner's institutional account, at a rate established by the court, to pay the outstanding balance owed. The court also may subsequently assess court costs against the prisoner and order the Department to remove funds from the prisoner's account to pay those costs. A federal court order requiring a prisoner to pay costs allows the Department to remove funds from the prisoner's account to pay the costs.
- L. If a prisoner completes a Disbursement Authorization (Prisoner) form (CAR-893) to have funds removed from his/her account to pay court filing fees and clearly indicates that on the disbursement, the disbursement shall be processed within two business days after initial receipt by Department staff in accordance with procedures issued by the CFA Deputy Director, provided that the prisoner has sufficient funds to pay the fee. Funds shall not be loaned for this purpose.
- M. Upon receipt of a court order requiring the Department to remove funds from a prisoner's account to pay court filing fees or costs, or receipt of a federal court order requiring a prisoner to pay costs, the Administrative Officer shall ensure that the funds are removed from the account in accordance with this policy and PD 04.02.105 unless otherwise specifically directed by the court. If there is more than one order requiring payment of filing fees/costs, the orders shall be paid in chronological order based on the date each order was received in the Business Office. Whenever the court orders the Department to remove funds by a specific date and sufficient funds have not been collected by that date, the Administrative Officer or designee shall notify the court of the amount collected and that the Department will continue to collect funds pursuant to the order until notified to do otherwise by the court. If written verification is received directly from the court that payments have been received from other than the

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Department, the debt shall be reduced accordingly. The debt shall be removed if the court notifies the Administrative Officer or designee that funds should no longer be collected.

- N. Once the funds have been paid in full or when the prisoner transfers to CRP or SAI, paroles, discharges from the jurisdiction of the Department or dies, the funds collected shall be sent to the court that issued the order explaining the circumstances under which the funds are being sent. If the prisoner transfers to another CFA institution and the total amount ordered to be removed has not been collected, the institution to which the prisoner transfers shall continue collection until the total amount owed is collected.

FOA

- O. The FOA Deputy Director shall establish a minimum amount or percentage prisoners in CRP shall be required to pay toward court-ordered victim restitution and filing fees/costs and how those payments shall be collected.
- P. The FOA Deputy Director shall ensure that a record-keeping system is maintained for each FOA prisoner and parolee required to pay court-ordered victim restitution or filing fees/costs pursuant to this policy.
- Q. Whenever a prisoner in CRP or SAI or on parole who has an outstanding balance to pay court-ordered victim restitution or filing fees/costs is reclassified to a CFA institution, copies of any orders received while in CRP or SAI or on parole and a statement of the balance then owed on all court-ordered restitution and filing fees/costs shall be forwarded to the local litigation coordinator at the receiving institution within ten business days.

Parole

- R. Pursuant to State law, the Parole Board shall require as a special condition of parole that a parolee who owes court-ordered victim restitution or filing fees/costs make payments toward the restitution or filing fees/costs owed while on parole. Whenever an FOA field agent or the Interstate Compact Manager becomes aware that a parolee under his/her supervision or on parole to another State, as appropriate, has an unpaid balance, s/he shall verify with the court that issued the order the amount then owed by the parolee. Once verified, the FOA field agent or Interstate Compact Manager shall notify the Parole Board that a special condition of parole needs to be added to require the parolee to make the required payments while on parole.
- S. Whenever a parolee is ordered to pay court-ordered victim restitution as a special condition of parole, the supervising field agent shall review the case at least every six months to ensure restitution is being paid as ordered. The final review shall be conducted not less than 60 calendar days prior to the scheduled parole discharge date. If it is determined that restitution was not being paid as ordered, the agent shall notify the Parole Board in writing of the amount not paid and any reason for the non-payment that is known by the agent. The Parole Board shall provide this information to the sentencing court, the prosecuting attorney and the victim unless the parole period is extended.
- T. When submitting a report pursuant to Paragraph S for a parolee not scheduled to discharge on his/her maximum sentence, the field agent also shall provide the Parole Board with specific information on the parolee's employment status, earning ability, financial resources, the wilfulness of the parolee's failure to pay and any other special circumstances that may have a bearing on the parolee's ability to pay. Absent compelling reasons to the contrary, the field agent shall recommend to the Parole Board that it extend the parole period whenever a parolee has wilfully failed to pay court-ordered restitution.
- U. The Parole Board may extend the parole period of a parolee who wilfully fails to pay court-ordered victim restitution and/or filing fees or costs owed pursuant to a special condition of parole. The Parole Board may revoke the parole of a parolee who has the resources to pay the restitution owed pursuant to a special condition of parole and has not made a good faith effort to do so. In determining whether to revoke parole for non-payment of restitution, the Parole Board shall consider the information provided

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by the field agent pursuant to Paragraphs S and T and any other relevant information in making this determination.

PROCEEDS FROM JUDGMENTS OR SETTLEMENTS

- V. MCL 791.220h and MCL 600.5511 require that all proceeds from a judgment or settlement in a lawsuit by or on behalf of a prisoner or parolee against the Department or its employees be used to pay various debts of the prisoner or parolee, including victim restitution and court costs and fees. Prior to authorizing the payment of a judgment or settlement to any prisoner or parolee in such a lawsuit, the Manager of the Litigation and FOIA Section of the Office of Audit, Internal Affairs and Litigation, or designee shall determine whether the Department has received an order from a court requiring the payment of restitution or court costs/fees by the prisoner or parolee. If an order has been received, the Manager of the Litigation and FOIA Section shall ensure that the appropriate court is contacted to determine the balance owed and that proceeds from the judgment or settlement are sent to the court issuing the order to satisfy any balances owed under the priority set forth in PD 04.02.105 "Prisoner Funds". If there is more than one victim to whom restitution is owed, payments shall be divided equally between or among the victims. If there is more than one order requiring payment of filing fees/costs, the orders shall be paid in chronological order based on the date each order was received in the appropriate Business Office. The Manager of the Litigation and FOIA Section shall ensure that the Administrative Officer of the institution at which the prisoner is housed or, if the prisoner is in CRP or SAI or is on parole, that appropriate FOA staff are notified of the amount sent to the court so that Department records are adjusted accordingly.

OPERATING PROCEDURE

- W. The FOA and CFA Deputy Directors shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive. FOA procedures shall be completed within 60 calendar days after the effective date of this policy directive; CFA procedures shall be completed no later than December 19, 2003. This includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed.

AUDIT ELEMENTS

- X. A Primary Audit Elements List has been developed and will be provided to the Administrator of the Office of Audit, Internal Affairs and Litigation, Wardens, FOA Regional Administrators and the SAI Administrator to assist with self audit of this policy, pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

PLC/OPH/12-08-03